



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 11, 1996

Ms. Eileen C. Begle
Assistant County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR96-0026

Dear Ms. Begle:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36690.

The Harris County Sheriff's Department (the "department") received a request from an employee's attorney for that employee's personnel file. You contend that the records are excepted from disclosure pursuant to sections 552.101 and 552.103(a).

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You contend that litigation is reasonably anticipated. To show that litigation is reasonably anticipated, a governmental body must provide "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. You have not made such a showing. Section 552.103(a) is therefore not applicable.

You contend that section 157.904 of the Local Government Code, in conjunction with section 552.101, makes the requested information confidential. Section 552.101 protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 157.904 of the Local Government Code governs the creation and maintenance of permanent personnel files by the sheriff's department of a county with a population of 2,000,000 or more.

Section 157.904 requires the sheriff's department to maintain a permanent personnel file for each employee of the department and prescribes the contents of the file.

It provides for the removal of records relating to disciplinary action taken against the employee which is found either to have been taken without just cause or to be based on insufficient evidence. Local Government Code § 157.904(e). The provision also requires employees to be notified of the addition to the file of negative records of employee misconduct or other notations of negative impact, affords employees an opportunity to respond to the negative record in writing, allows employees to have the response included in the file, and grants employees the right to receive copies of records in the file. *Id.* § 157.904(f),(g).

Section 157.904 also addresses the release of information from the file. Specifically, it states that

[t]he sheriff or the sheriff's designee may not release an employee record or other information contained in an employee's permanent personnel file without first obtaining the employee's written permission, unless the release of the record or information is required by law.

Id. § 157.904(h).

Though this office has not construed section 157.904 in the context of chapter 552 of the Government Code, this office has interpreted section 143.089 of the Local Government Code, a provision substantially identical to section 157.904. *See* Open Records Decision No. 562 (1990).

Section 143.089 provides for mandatory access by a police officer for a copy of any of the information in his own civil service file. Information maintained in civil service files also must be released unless some provision of the Open Records Act or other law permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 (1990) at 6 (construction of section 143.089(f)).

Since the language of section 157.904 is virtually identical to the language in section 143.089, we conclude that section 157.904 provides an employee a mandatory system of access to the file. If the employee has given her written permission for access to her employment file, the information at issue must be released to the requestor.

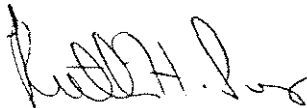
We note that some of the information at issue is confidential and may not be released without the employee's written permission. Sections 552.024 and 552.117 provide that an employee can opt to keep confidential his or her home address, home telephone number, social security number, and information that reveals whether the individual has family members.¹ *See* Open Records Decision No. 622 (1994) (section

¹We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental

552.117 also excepts employees' former home addresses and telephone numbers). Some of the information at issue is protected on the basis of common-law privacy under section 552.101. *See* Open Records Decision No. 600 (1992) (certain financial information concerning employee is confidential). Even if the employee has not opted to keep her social security number confidential, federal law makes confidential social security numbers obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii)(I). We have flagged examples of the types of information that are confidential. The other requested information must be released even if the employee has not given her written permission for access.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding the other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 36690

Enclosures: Submitted documents

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(Footnote continued)

body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*